

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

KENNETH RAY MYLES	§	
v.	§	CIVIL ACTION NO. 6:09cv396
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Kenneth Myles, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of prison disciplinary action taken against him. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Myles complained of five disciplinary cases which he received, apparently for refusing to work. He says that he lost an unspecified amount of good time and also received cell, recreation, and commissary restrictions, and a reduction in classification status. Myles acknowledged that he is not eligible for release on mandatory supervision, and the Fifth Circuit's decision in a federal habeas corpus petition which he filed indicates that he was convicted of aggravated robbery, which renders him ineligible for release on mandatory supervision.

After review of the pleadings, the Magistrate Judge issued a Report on September 14, 2009, recommending that the petition be dismissed. The Magistrate Judge concluded, pursuant to Sandin v Conner, 115 S.Ct. 2293, 2301 (1995) that Myles had not shown that the punishments imposed in the disciplinary cases implicated any constitutionally protected liberty interests, and so Myles was not entitled to habeas corpus relief. The Magistrate Judge also recommended that Myles be denied a certificate of appealability *sua sponte*.

Myles filed objections to the Magistrate Judge's Report on October 2, 2009. In his objections, Myles says first that there was "no preponderance of the evidence" that he was guilty of the aggravated robbery, as shown by the fact that the jury voted 7-5 that he did not do it. He says that he cannot afford to pay the fees to go to college and that his typewriter was confiscated. Myles states that he had medical reasons why he could not work and so he got "four cases for nothing."

Myles states that the evidence against the officers is "not only a blanket," but "a sore thumb that looks like 100 million neon lights." He says that his case, like 200 others, was written by Lt. Ham out of malice.

Finally, Myles says that prison regulations creating liberty interests are a necessary part of a procedural due process claim. He says that his petition shows the violation of constitutional rights and that the officers were deliberately indifferent to him and not merely acting accidentally or inadvertently.

Myles' objections are without merit. As the Magistrate Judge stated, Myles has not shown that any of the punishments imposed as a result of the disciplinary cases complained of violated any constitutionally protected liberty interests. His reference to "prison regulations creating liberty interests" is a construct which the Supreme Court rejected in Sandin, as the Magistrate Judge explained; the Supreme Court stated that the operative interest involved is the nature of the deprivation, and in this case, Myles has not shown that the nature of the deprivations imposed upon him implicated any constitutionally protected liberty interests. Thus, the Magistrate Judge properly recommended that the application for habeas corpus relief be denied.

The Court has conducted a careful *de novo* review of the pleadings in this case, including the original petition, the Report of the Magistrate Judge, the Petitioner's objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Kenneth Myles be and hereby is denied a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 6th day of October, 2009.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**